

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|--------------------------------|
| ABDULLAH HUBBARD, | § |
| | § |
| Defendant Below- | § No. 344, 2009 |
| Appellant, | § |
| | § |
| v. | § Court Below—Superior Court |
| | § of the State of Delaware, |
| STATE OF DELAWARE, | § in and for New Castle County |
| | § Cr. ID 9905018910 |
| Plaintiff Below- | § |
| Appellee. | § |

Submitted: August 4, 2009

Decided: September 21, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 21st day of September 2009, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The defendant-appellant, Abdullah Hubbard, filed this appeal from the Superior Court's order denying his motion for modification of sentence. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Hubbard's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Hubbard pled guilty in 2002 to Robbery in the First Degree. The Superior Court sentenced him to ten years at Level

V incarceration, to be suspended after serving four years for decreasing levels of supervision.¹ In April 2009, Hubbard filed a motion seeking modification or reduction of his sentence. The Superior Court denied his motion on the grounds that his guilty plea had been entered, and his sentence imposed as an agreed-to sentence, pursuant to then-existing Superior Court Criminal 11(e)(1)(c), his motion for modification for sentence was untimely,² and his sentence was appropriate. Hubbard appeals that decision.

(3) The gist of Hubbard’s sentence modification motion asserted that he had been transferred to protective custody within the Department of Correction and was being denied the opportunity to participate in rehabilitation programs and the concomitant opportunity to be recommended for a sentence modification by correctional authorities. Hubbard asserts that his transfer to protective custody constitutes “extraordinary circumstances” under Rule 35(b) to warrant a sentence modification.

(4) We disagree. Hubbard acknowledges that he was transferred to protective custody as a result of accusations by other Muslim inmates that

¹ At the time, Hubbard was serving other sentences for a probation violation and convictions for robbery and possession of drug paraphernalia.

² Superior Court Criminal Rule 35(b) provides in part: “The court may reduce a sentence of imprisonment on a motion made within 90 days after the sentence is imposed....The court will consider an application made more than 90 days after the imposition of sentence only in extraordinary circumstances or pursuant to 11 Del. C. § 4217.”

Hubbard had stolen money from them. Placement of a prisoner into protective custody falls within “the expected perimeters” of a lawful sentence and does not “present a dramatic departure from the basic conditions” of a defendant’s sentence.³ In this case, we agree with the Superior Court’s conclusion that Hubbard’s transfer to protective custody did not amount to extraordinary circumstances to justify a modification of his sentence under Rule 35(b).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Sandin v. Conner*, 515 U.S. 472, 485 (1995).